

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

RICHARD CHARLES LUSSY,

Plaintiff,

v.

HENRY PAUMIE LUSSY, et. al.,

Defendants.

CV-17-79-BU-BMM-JCL

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Richard Charles Lussy filed an amended complaint and had summonses issued on November 8, 2017. (Doc. 8.) Lussy filed a Motion for Default Judgment as to Defendants Launa Lynn Roque and Juahlee Murie Bornff on December 11, 2017. (Doc. 11.) Attached to the motions were summonses and

proofs of service for both Roque and Bornff. (Doc. 11-1.) Lussy filed an amended Motion for Default Judgment on December 15, 2017. (Doc. 15.)

Roque and Bornff responded by filing the instant Motion to Dismiss For Failure to State A Claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. 18.)

United States Magistrate Judge Jeremiah Lynch issued an Order and Findings and Recommendation in this matter on January 23, 2018. (Doc. 30.) Judge Lynch found that Roque and Bornff had defaulted as of Lussy's sufficient application for the entry of default. (Doc. 30 at 3.) Judge Lynch found that the appropriate vehicle for Roque and Bornff to contest the default is a Motion to Set Aside pursuant to Federal Rule of Civil Procedure 55(c). *Id.* Judge Lynch recommended that the Court deny Roque and Bornff's Motion to Dismiss. *Id.* Roque and Bornff have subsequently filed a Motion to Set Aside. (Doc. 39.)

No party filed objections to Judge Lynch's Findings and Recommendation. The Court has thus reviewed the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Lynch's Findings and Recommendation, and adopts them in full.

ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Lynch's Findings and Recommendation (Doc. 30) is **ADOPTED IN FULL**.

Defendants Roque and Bornff's Motion to Dismiss for Failure to State a Claim (Doc. 18) is **DENIED**.

DATED this 6th day of February, 2018.



Brian Morris
United States District Court Judge